

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

YORI HENRY FAIRLEY

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:08cv647HSO-JMR

OCHSNER MEDICAL FOUNDATION, et al

DEFENDANTS

ORDER ADOPTING REPORT AND RECOMMENDATION

This cause comes before the Court on the Report and Recommendation [2] of Chief United States Magistrate Judge John M. Roper entered in this cause on May 11, 2010. The record reveals that on or about April 1, 2009, the Magistrate Judge issued a Text Order directing Plaintiff to show cause why this matter should not be dismissed for failure to prosecute. Plaintiff was warned that failure to respond to the Order and/or properly serve Defendants may result in dismissal of this lawsuit.

Because Plaintiff has failed to comply with the Court's April 1, 2009, Text Order, or otherwise attempt to communicate with the Court, the Magistrate found that Plaintiff had a lack of interest in pursuing her claims. *See Rep. and Rec. at p. 1.* The Magistrate therefore recommended dismissal of this case pursuant to Federal Rule of Civil Procedure 41(b), and pursuant to the Court's inherent authority to dismiss an action *sua sponte*. *See id.* at p. 1. Plaintiff has not served any objection to the Report and Recommendation.

Plaintiff filed her Complaint on September 24, 2008, against Ochsner Medical Foundation, Dr. Vincent Adolph, Dr. Richelle Monier, Dr. Robert Marier, individually, Stephanie Irvin, individually, the Jefferson Parish Sheriff

Department, the Jefferson Parish District Attorney, and Unknown Deputies and Unknown Defendants. Pursuant to Federal Rule of Civil Procedure 4(c), Plaintiff was responsible for serving summons upon Defendants within the time limitations imposed by Rule 4(m). Rule 4(m) states in pertinent part that

[i]f a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

FED. R. CIV. P. 4(m).

To date, no summons have issued, nor has Plaintiff served summons upon any Defendant. Plaintiff has not responded to the Magistrate Judge's April 1, 2009, Text Order, or to his Report and Recommendations. Where a party fails to file specific objections to a magistrate judge's report and recommendation, the district court reviews the report and recommendation for findings and conclusions that are clearly erroneous or contrary to law. *See* 28 U.S.C. § 636(b)(1); *see also United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Based on the record before this Court, the undersigned finds that the Magistrate Judge's findings were not clearly erroneous, nor were his conclusions contrary to law. After referral of hearing by this Court, and the Court, having fully reviewed the Report and Recommendation [2], the relevant law, and the record in this matter, and being fully advised in the premises, finds that the Report and Recommendation [2] of Chief United States Magistrate Judge John M. Roper, should be adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [2] of the Magistrate entered on May 11, 2010, should be, and hereby is, adopted as the finding of this Court, and the Complaint is hereby dismissed without prejudice pursuant to FED. R. CIV. P. 41(b). A separate judgment will be entered herein in accordance with this Order as required by Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED AND ADJUDGED, this the 13th day of July, 2010.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE